

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Carrera Communications, LP)	File No. EB-04-IH-0274
)	NAL/Acct. No. 200532080137
)	FRN No. 0010-7507-43
)	

ORDER OF FORFEITURE

Adopted: April 25, 2007**Released: May 16, 2007**

By the Commission:

I. INTRODUCTION

1. In this Order of Forfeiture, we assess a monetary forfeiture of \$345,900 against Carrera Communications, LP (“Carrera”) for willful and repeated violations of the Communications Act of 1934, as amended (the “Act”), and our rules. For the reasons set forth below, we find that Carrera willfully and repeatedly violated the Act and Commission rules by failing to contribute to the Universal Service Fund (“USF”) and the Telecommunications Relay Services (“TRS”) Fund and failing to pay its regulatory fees.¹ In addition, we find that Carrera also willfully and repeatedly violated Commission rules requiring it to submit Telecommunications Reporting Worksheets (“Worksheets”) and predecessor forms.² Finally, we find that Carrera willfully and repeatedly failed to respond to Commission orders.

2. Carrera’s failures to pay its Congressionally-mandated USF and TRS Fund contributions strike at the core of the Commission’s mission to promote access to affordable, quality telecommunications services for all Americans. As such, they are especially serious. In section 254 of the Act, Congress codified the historical commitment to universal service for consumers in all regions of the nation. In section 225 of the Act, Congress directed the Commission to ensure the availability of TRS to hearing- and speech-impaired individuals.³ Both programs are supported by mandatory contributions from telecommunications carriers providing interstate telecommunications services.⁴ The Commission also requires certain providers of interstate telecommunications, including interconnected Voice over Internet Protocol (VoIP), to contribute to the USF.⁵ Congress similarly directed the Commission to

¹ 47 U.S.C. § 254; 47 C.F.R. §§ 1.1154, 1.1157(b)(1), 54.706(a), 64.604(c)(5)(iii)(A).

² 47 C.F.R. § 54.711, 64.604.

³ See 47 U.S.C. § 225 (“[T]he Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States”).

⁴ 47 U.S.C. §§ 225, 254(d).

⁵ See 47 U.S.C. § 254(d) (“Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.”); *Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay* (continued...)

establish the regulatory fee program and to collect fees from its regulatees, including telecommunications carriers, to support certain regulatory functions. To achieve Congress' goals, carriers subject to contribution requirements must provide certain necessary information and contribute their equitable share to support these programs. Failure to do so threatens the integrity and viability of these Congressional mandates. The Commission cannot and will not tolerate any carrier's failure to participate in these programs as required by our rules. Finally, Carrera's failure to respond to Commission orders to provide information threatens to compromise our ability to adequately and efficiently investigate violations of the Act and our rules. We will use our forfeiture authority to penalize and deter violations such as those committed by Carrera.

II. BACKGROUND

3. The facts and circumstances surrounding this case are set forth in more detail in the *Carrera NAL* and need not be reiterated here at length. Carrera is a Texas-based telecommunications carrier that has been providing telecommunications services since 1999.⁶ Despite multiple Commission inquiries into its compliance with our rules and the Act, and with the exception of a few isolated acts of post-investigative compliance, Carrera continues a pattern of egregious non-compliance in failing to submit the required periodic financial information, to make required payments to the subject programs, and to respond to Commission orders.⁷

4. The Universal Service Administrative Company ("USAC") administers the universal service support mechanisms and performs billing and collection functions.⁸ The National Exchange Carrier Association ("NECA") administers the TRS fund. The Commission requires carriers to provide revenue information on FCC Form 499, Telecommunications Reporting Worksheet, on a periodic basis,⁹ and the administrators use that information to determine each carrier's universal service and TRS contributions. In 2001, the Commission modified its reporting requirements for the universal service program to require carriers to file not only an Annual Worksheet,¹⁰ but also to file a Worksheet each quarter projecting their interstate and international revenue for the upcoming quarter and providing their interstate and

(Continued from previous page) _____

Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-In-Billing and Billing Format, IP-Enabled Services, Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 06-122 and 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, and 98-170, 21 FCC Rcd 7518 (2006) (extending section 254(d) permissive authority to require interconnected VoIP providers to contribute to the USF) (2006 Contribution Methodology Order).

⁶ See Statement in Response to Notice of Apparent Liability for Forfeiture, and to the Extent Required, Request for Waiver, submitted by Jonathan S. Marashlian, the Helein Law Group, PC, Attorney for Carrera Communications ("Response"), at 1.

⁷ Since July 25, 2005, the date on which the Commission issued the *Carrera NAL*, Carrera has failed to file the three Worksheets due, failed to make any of its required federal telecommunications program payments.

⁸ See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18415, ¶ 25 (1997) ("*NECA Changes Order*"); 47 C.F.R. § 54.702(b).

⁹ 47 C.F.R. § 54.711.

¹⁰ See *FCC Form 499-A Telecommunications Reporting Worksheet – Annual Filing*, <http://www.fcc.gov/Forms/Form499-A/499a-2003.pdf> (April 2003) ("Annual Worksheet").

international revenues from the previous quarter.¹¹ The projected revenue information provided on the Quarterly Worksheets determines each carrier's contribution to the universal service fund on a quarterly basis, with a yearly true-up using the Annual Worksheet.¹² The revenue information provided on the Annual Worksheet also determines a carrier's contributions to the TRS fund. A carrier's failure to file Worksheets or its submission of inaccurate or untruthful information "may subject the contributor to the enforcement provisions of the Act and any other applicable law."¹³

5. USAC bills carriers each month based on their quarterly contribution amount.¹⁴ NECA bills carriers annually. The Commission's rules do not, however, condition payment on receipt of an invoice or other notice from USAC or NECA.¹⁵ A carrier that does not file an Annual or Quarterly Worksheet may fail to receive an invoice from USAC or NECA, but is nonetheless required to contribute to the USF, unless its revenues are considered *de minimis*, and to the TRS fund regardless. The instructions for the Annual and Quarterly Worksheets include tables for carriers to calculate annual contributions.¹⁶

¹¹ See *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001) ("Quarterly Reporting Order"). The first Quarterly Worksheet, reporting revenue data from the first quarter of 2001 (January 1 through March 31, 2001) was due May 11, 2001; thereafter, carriers report their revenues for the prior quarter by the beginning of the second month in each quarter (i.e., February 1, May 1, August 1, and November 1). See *Quarterly Reporting Order*, 16 FCC Rcd at 5755, ¶ 19 & n.32. See *FCC Form 499-Q Telecommunications Reporting Worksheet – Quarterly Filing for Universal Service Contributors*, <http://www.fcc.gov/Forms/Form499-Q/499q.pdf> (April 2003) ("Quarterly Worksheet").

¹² See 47 C.F.R. § 54.709(a); "Telecommunications Carrier Registration Information Now Available Online," Public Notice, DA 01-2465 (rel. Oct. 29, 2001). The Commission modified its rules on carrier contributions to the universal service fund. See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) ("Interim Contribution Order"). As of April 1, 2003, USAC bases a carrier's universal service obligation on the carrier's projected collected revenue rather than its historic gross-billed revenue. *Interim Contribution Order*, 17 FCC Rcd at 24969-74, ¶¶ 29-39.

¹³ 47 C.F.R. § 54.713. See also *NECA Changes Order*, 12 FCC Rcd at 18442, ¶ 80 & n.165 (citing 47 U.S.C. §§ 206-209, 312, 403, 503).

¹⁴ See, e.g., *Federal-State Joint Board on Universal Service*, Sixteenth Order on Reconsideration in CC Docket No. 96-45, Eighth Report and Order in CC Docket No. 96-45, and Sixth Report and Order in CC Docket No. 96-262, 15 FCC Rcd 1679, 1687, ¶ 18 (1999); *Federal-State Board on Universal Service*, Further Notice of Proposed Rulemaking and Order, 15 FCC Rcd 19947, 19954, ¶ 17 (2000); *Interim Contribution Order*, 17 FCC Rcd at 24971-72, ¶ 35; *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, *Federal-State Board on Universal Service*, Second Order on Reconsideration in CC Docket No. 97-21, 12 FCC Rcd 22423, 22425, ¶ 3 (1997). Carriers must pay by the date shown on the invoice from the Administrator. 47 C.F.R. § 54.711(a) ("The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which payments must be made.") See, e.g., "Proposed Third Quarter 2003 Contribution Factor," Public Notice, 18 FCC Rcd 11442 (Wireline Comp. Bur. 2003) ("Contribution payments are due on the date shown on the administrator invoice.")

¹⁵ See 47 C.F.R. §§ 54.706(b); 64.604 (c)(5)(iii)(A).

¹⁶ See "2002 FCC Form 499-A, Telecommunications Reporting Worksheet" at Instructions—page 1 "Instructions for Completing the Worksheet for Filing Contributions to Telecommunications Relay Service, Universal Service, Number Administration, and Local Number Portability Support Mechanisms," <http://www.fcc.gov/Forms/Form499-A/499a-2002.pdf> ("2002 Telecommunications Reporting Worksheet Instructions").

6. In 2004, the Enforcement Bureau (“Bureau”) sought to identify resellers of telecommunications services that failed to register as telecommunications service providers with the Commission and, thus, may also have failed to satisfy various Commission program requirements.¹⁷ On March 30, 2004, the Bureau’s audit staff sent a letter to Carrera requesting information pertaining to Carrera’s compliance with section 64.1195 of the Commission’s rules.¹⁸ On May 4, 2004, Carrera registered and belatedly filed certain financial information that had been due April 1, 2004.¹⁹ After determining that Carrera apparently failed to timely register with the Commission or timely file required Worksheets, the Bureau issued a letter of inquiry (“LOI”) to Carrera on July 29, 2004.²⁰ Carrera did not respond within the time required. After Bureau staff telephoned Carrera regarding its failure to respond, it provided only an incomplete response to the LOI.²¹ The Bureau issued two additional letters to Carrera, directing it to provide complete responses to the original LOI and warning that “[f]ailure to respond fully to the Bureau’s LOI can by itself subject Carrera to potential enforcement action.”²² Carrera failed to respond in any manner to the last two LOIs or to telephone and voicemail messages left by Bureau staff. During this same period, Carrera continued to fail to make any universal service contributions, paid its 2003 regulatory fees and TRS Fund contribution late and only after repeated collection efforts, failed to file the quarterly Worksheets due May 1, August 1, and November 1, 2004, and February 1 and May 1, 2005, and failed to file the annual 499-A Worksheet due April 1, 2005.

7. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$120,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1.2 million for a single act or failure to act for violations occurring before September 7, 2004, and up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1.325 million for a single act or failure to act for violations occurring on or after September 7, 2004.²³ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and,

¹⁷ See 47 C.F.R. § 64.1195(a).

¹⁸ See letter from Hugh Boyle, Chief Auditor, Investigations and Hearings Division, Enforcement Bureau, to Carrera dated March 30, 2004 (“March 30 Audit Letter”).

¹⁹ See electronic mail response to the March 30 Audit Letter from Carrera dated May 7, 2004.

²⁰ Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Joann P. Bennett, Carrera, dated July 29, 2004.

²¹ Letter from Joann P. Bennett, General Partner, Carrera, to Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated September 10, 2004, with facsimile transmission date of September 13, 2004 (“*Carrera Response*”). Carrera did not respond fully to LOI Inquiry Numbers 8, 9, 10, and 12 regarding various regulatory program payments.²¹ In addition, the affidavit Carrera supplied to support its response did not contain a statement that it was made under penalty of perjury, as specifically required in the LOI. Moreover, in response to LOI Inquiry Number 5, Carrera did not provide a specific response setting forth the required revenue information.

²² Letters from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Joann P. Bennett, Carrera, dated November 5, 2004 and January 21, 2005. Carrera’s receipt of the letters was confirmed by return of the mail receipts to the Bureau and confirmations of the facsimile transmissions.

²³ 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2). The Commission recently amended its rules to increase the maximum penalties to account for inflation since the last adjustment of the penalty rates. See *Amendment of Section 1.80(b) of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004).

with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²⁴

8. The Commission issued the *Carrera NAL* on July 25, 2005, proposing a forfeiture of \$606,500 for the apparent willful and repeated failures listed above. The Commission also ordered Carrera to file all annual Worksheets required since it began providing telecommunications services and to submit a report setting forth in detail its plan to come into compliance with the relevant payment and reporting rules.

9. On November 14, 2005, Carrera submitted its response to the *Carrera NAL*.²⁵ Therein, Carrera admits the substantive allegations of the *Carrera NAL*, but argues that its repeated and long-standing violations of the law were not intentional and should not be considered willful and repeated or egregious. Carrera does not address its failure to comply with our July 25, 2005 order to file a compliance report and overdue Worksheets or its failure to file the Worksheets or pay the contributions or regulatory fees due since the *Carrera NAL*. Carrera further argues that the forfeiture should be cancelled or reduced from the \$606,500 proposed in the *Carrera NAL* to \$20,000 based on its assertions of financial hardship. Carrera submitted certain financial information with its response. Since the *Carrera NAL* was issued to date, Carrera has not filed any required Worksheets, paid any of the USF or TRS Fund contributions or regulatory fees due or owing, or filed any of its outstanding reporting forms.

III. DISCUSSION

10. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²⁶ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.²⁷ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act²⁸ and the Commission has so interpreted the term in the section 503(b) context.²⁹ The Commission may also assess

²⁴ 47 U.S.C. § 503(b)(2)(D); see *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission’s Rules*, Report and Order, 12 FCC Rcd 17087, 17100, ¶ 27 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b).

²⁵ At the same time, Carrera petitioned the Commission for a waiver of rule 1.80(f)(3), pursuant to which the *Carrera NAL* required the company to file its NAL response 30 days from the date of the *Carrera NAL*. Carrera notes that the Commission may waive its rules for good cause and to serve the public interest. Carrera argues that a limited waiver to extend the procedural deadline for Carrera’s NAL response in recognition of severe adverse personal circumstances of a Carrera partner and to consider the merits of this matter would serve the public interest. Considering hardship, equity and effective implementation of overall policy, we hereby grant Carrera’s request and accept its NAL response. See, e.g., *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *Northeast Cellular Telephone Company, L.P., et al. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

²⁶ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); see also 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464).

²⁷ 47 U.S.C. § 312(f)(1).

²⁸ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²⁹ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, ¶ 5 (1991) (“*Southern California Broadcasting Co.*”).

a forfeiture for violations that are merely repeated, and not willful.³⁰ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.³¹ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.³² The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has willfully or repeatedly violated the Act or a Commission order or rule.³³

11. We find by a preponderance of the evidence, as discussed in detail in the *Carrera NAL* and herein, that Carrera has violated section 254(d) of the Act and sections 54.711(a), 64.604(c)(5)(iii), 54.706(a), 1.1154, and 1.1157(b)(1) of the Commission’s rules.³⁴ Specifically, we find based on a preponderance of the evidence that Carrera: (1) willfully and repeatedly failed to file Worksheets and predecessor forms; (2) willfully and repeatedly failed to make requisite contributions toward the Universal Service and TRS Funds; (3) willfully and repeatedly failed to pay regulatory fees to the Commission; and (4) willfully and repeatedly failed to respond to Commission communications and comply with associated orders.

12. In the *Carrera NAL*, we proposed a forfeiture of \$606,500 for Carrera’s apparent willful and repeated violations of section 254(d) of the Act and sections 54.711(a), 64.604(c)(5)(iii), 54.706(a), 1.1154, and 1.1157(b)(1) of the Commission’s rules.³⁵ As explained below, with one exception, we reject Carrera’s various arguments to eliminate or reduce the forfeiture. We credit in part Carrera’s argument that, pursuant to Commission precedent, it would be unable to pay the proposed forfeiture in full based on its gross revenues and thus reduce the proposed forfeiture for the willful and repeated violations of the Act and our rules to \$345,900.

A. Carrera’s Violations were Willful and Repeated

13. Carrera admits to the violations detailed in the *Carrera NAL*.³⁶ Despite these failures, Carrera contends the Commission should cancel or reduce the forfeiture amount because its violations were inadvertent and unintentional and thus should not be considered willful and repeated or egregious. In support, Carrera claims that a general partner initially “investigated all the various regulatory requirements associated with the industry [the partnership was] entering” and that, for its first two years of operation, it “used the FCC’s ‘De Minimis Worksheet’ [contained in the instructions to the Annual Worksheet and its predecessor forms] to determine its regulatory responsibilities,” concluding that it “did not have to worry about FCC regulatory requirements for a while because [its] interstate

³⁰ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

³¹ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

³² 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

³³ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (“*SBC Forfeiture Order*”).

³⁴ 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.711(a), 64.604(c)(5)(iii), 54.706(a), 1.1154, 1.1157(b)(1).

³⁵ *Carrera NAL*, 20 FCC Rcd at 13317-20, ¶¶ 23-31.

³⁶ Response at 7.

telecommunications receipts were so low.”³⁷ Carrera states that by 2001, when Carrera’s revenues “no longer qualified as *de minimis*,” it failed to comply with relevant requirements because that one partner had become distracted from compliance duties by personal difficulties.³⁸ Carrera argues that thus its non-compliance was unintentional and the forfeiture should be rescinded or cancelled. This argument fails for two reasons.

14. First, the Commission may assess and has assessed forfeitures for violations that are merely repeated, and not willful.³⁹ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.⁴⁰ In this case, we found -- and Carrera does not dispute -- that it repeatedly failed to make its universal service and TRS fund contributions and make regulatory fee payments, repeatedly failed to file required Worksheets, and repeatedly failed to respond to Commission orders.⁴¹ Therefore, the Commission is well within the authority granted by section 503(b) in assessing a forfeiture against Carrera.⁴²

15. Second, Carrera’s actions were willful in addition to being repeated. The Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁴³ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,⁴⁴ and the Commission has so interpreted the term in the section 503(b) context.⁴⁵ Thus, Carrera’s position that its failures were unintentional because its management was distracted and did not reconsider in certain years whether it might, at that time, owe money to federal telecommunications programs is irrelevant to a determination of its willfulness.⁴⁶ Its violation was willful under the definition in the Act because it made a conscious decision not to file forms or to pay into the funds.

16. Finally, we note that Carrera’s claims of inadvertence are contrary to the facts. For example, Carrera asserts it determined it was *de minimis* for purposes of USF contributions in 1999 and 2000. It further contends that it thus was diligent with respect to all its federal regulatory obligations until 2001 when one of its partners had personal difficulties and was rendered unable to perform competently

³⁷ *Id.* at 7; Declaration at 2. We note however, that carriers are obligated to register and file annual Worksheets even if they are *de minimis* for purposes of USF contribution. See, e.g., *Wireline Competition Bureau Reminds De Minimis Telecommunications Providers of Certain FCC Registration, Reporting, and Contribution Requirements*, Public Notice, WC Docket No. 06-122 (WCB rel. Jan. 31, 2007)

³⁸ To the extent that Carrera is suggesting that the forfeiture should be reduced because of a record of compliance prior to 2001, we reject that argument based on the facts discussed below.

³⁹ See, e.g., *Callais Cablevision*, 16 FCC Rcd 1359 (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

⁴⁰ *Southern California Broadcasting*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision*, 16 FCC Rcd at 1362, ¶ 9.

⁴¹ *Carrera NAL*, 20 FCC Rcd at 13313-17, ¶¶ 14-22.

⁴² 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

⁴³ 47 U.S.C. § 312(f)(1).

⁴⁴ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁴⁵ See, e.g., *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388.

⁴⁶ See, e.g., *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861 (2002) (rejecting licensee’s argument that tower lighting violation was not “willful” when licensee had no knowledge that antenna light had gone out; “It is irrelevant whether Eure knew about the light outage on its tower....”).

Carrera's compliance responsibilities.⁴⁷ Carrera's failures to comply with federal regulatory obligations, however, were not limited to USF contributions and in some instances pre-date the purported difficulties of its management. For example, despite its obligation to do so, Carrera did not file forms for or pay TRS Fund contributions and regulatory fees from at least April 2000.⁴⁸ These significant failures belie Carrera's claim of historic compliance with its regulatory obligations.⁴⁹

B. Carrera's Ability to Pay the Forfeiture Amount

17. We find in accord with our precedent regarding ability to pay forfeitures that Carrera has established its average gross revenues indicate it would be unable to pay the proposed forfeiture amount in full and therefore we reduce the forfeiture from the proposed amount of \$606,500 to \$345,900.⁵⁰ Carrera, however, contends that the forfeiture should be cancelled or further reduced to \$20,000 because it, and one of its partners, would be unable to pay even an amount reduced in accord with precedent. We find that Carrera did not produce nor does the record contain evidence to support this contention and decline to reduce the forfeiture below \$345,900 in this case, as the revised forfeiture amount falls squarely within the range that Commission precedent has deemed not excessive.⁵¹

⁴⁷ Response at 3 ("By 2001, the year in which the Commission ... approved FCC Form 499 to govern compliance with various federal funding programs, [one partner] was completely distracted [by personal circumstances] from running the business and paying proper attention to regulatory compliance matters."). The Commission created FCC Form 499 and consolidated the filing requirements for various federal telecommunications programs in 1999, not in 2001. Cf., *1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order, 14 FCC Rcd 16602 (1999), *Implementation of the Subscriber Carrier Selection Provisions of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16024 (2000) ("Carrier Selection Order") (The 2001 approval cited by Carrera was by the Office of Management and Budget and for purposes only of adding the registration information collection requirement adopted in the *Carrier Selection Order* to the already consolidated (and OMB-approved) FCC Form 499-A. See 66 Fed. Reg. 17083 (Mar. 29, 2001)); see also, e.g., *Common Carrier Bureau Announces Release of September Version of Telecommunications Reporting Worksheet (FCC Form 499-S)*, Public Notice, 14 FCC Rcd 12171 (CCB July 30, 1999); *Common Carrier Bureau Announces Release of Telecommunications Reporting Worksheet (FCC Form 499-A) for April 1, 2000 Filing by all Telecommunications Carriers*, Public Notice, 15 FCC Rcd 16434 (CCB Mar. 1, 2000).

⁴⁸ See *Carrera NAL*, 20 FCC Rcd at 13314-16. In addition, we note the financial documentation submitted by Carrera suggest that its revenues may have been above the USF *de minimis* threshold for 2000 and thus it is possible that Carrera should have been filing and contributing even for USF purposes by September 2000. We cannot determine this fact with specificity because Carrera, despite our order to do so, still has not filed the outstanding reporting forms that would provide such information. We note that the summary financial information that Carrera provided with its NAL response shows dramatic increases from 1999 to 2000 in both revenues and long distance resale purchases.

⁴⁹ We note the personal difficulties of an individual partner cannot excuse a carrier's violations of law and to the extent Carrera's submission raises such an argument, we reject it.

⁵⁰ As directed in the *Carrera NAL* and in accord with our prior precedent, Carrera submitted its three most recent tax returns to establish its average gross revenues and substantiate its claim of inability to pay.

⁵¹ See, e.g., *Alpha Ambulance, Inc.*, Order, 19 FCC Rcd 2547, 2549 (2004); see also *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) (determining appropriateness of forfeiture amount by proportionality to gross revenues); *Local Long Distance, Inc.*, Order on Reconsideration, 16 FCC Rcd 10023, 10025, ¶¶ 6-8 (2001) (same); *Hoosier Broadcasting Company*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641, ¶ 7 (Enf. Bur. 2002) (same).

18. The Commission has repeatedly held that a company's gross revenues are the best indicator of its ability to pay a forfeiture amount.⁵² The Commission "looks to companies' gross revenues as reasonable and appropriate yardsticks to determine their ability to pay assessed forfeitures."⁵³ In this instance, we looked to Carrera's average gross revenues and followed our precedent by reducing the proposed forfeiture amount proportionally. Carrera argues that only one of its general partners is liable for Carrera's debts and that partner is unable to pay the forfeiture amount or even an amount reduced in accord with our precedent. We reject these arguments because Carrera has not substantiated the claims. The summary financial information that Carrera produced lacks the detail we repeatedly have found necessary to evaluate the ability to pay of an entity beyond its gross revenues.⁵⁴ Further, Carrera did not provide personal tax returns or other financial information for any of its general partners.⁵⁵ The Commission may not find that an entity or individual does not have the ability to pay a forfeiture based on mere assertions or speculation.⁵⁶

IV. CONCLUSION

19. We find that Carrera violated multiple Commission rules pertaining to its universal service obligations for years, failed to file Worksheets and predecessor forms, and withheld payments to Congressionally-mandated telecommunications programs, thereby denying these programs of funds due and owing for an extended period of time and totaling many thousands of dollars in withheld contributions. In light of the seriousness, duration and scope of Carrera's violations, we conclude that the forfeiture proposed in the *Carrera NAL* and revised as set forth above to \$345,900 is warranted.

V. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED THAT, pursuant to sections 4(i), 4(j), and 303(r) of the Act, 47 U.S.C. §§ 154(i), 154(j), and 303(r), and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, Carrera's Petition for Waiver is GRANTED.

⁵² See *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17106-07, ¶ 43 (1997), *recon. denied* 15 FCC Rcd 303 (1999); see also cases at n. 48 *supra*.

⁵³ *Alpha Ambulance, Inc.*, 19 FCC Rcd at 2549.

⁵⁴ For example, the financial information Carrera submitted indicates that in 2004, the first year of our investigation, millions of dollars of capital were contributed to Carrera and ultimately used to make distributions to partners and for unidentified service contract payments. Carrera's submission did not provide any detail about these capital contributions, distributions, or payments. See, e.g., *WebNet Communications, Inc.*, Order of Forfeiture, 18 FCC Rcd 6870, 6878, ¶ 16 (2003) ("*WebNet*") (addressing need for complete and detailed financial statements in evaluating such claims); *Applications of San Luis Obispo Limited Partnership*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 9616, 9620 ¶¶ 14-15 (1996) (same), *recon. denied*, 13 FCC Rcd 1020, 1024, ¶ 14 (1998); *Black & Gold Radio Company, Inc. Licensee of Station WLCS(FM) North Muskegon, Michigan*, Forfeiture Order, 10 FCC Rcd 8719, ¶¶ 3-4 (1995) (same); *Application of Ellwood Beach Broadcasting, Ltd.*, Memorandum Opinion and Order, 8 FCC Rcd 453, 454, ¶ 9 (1993) ("*Ellwood Beach Broadcasting*") (same).

⁵⁵ See, e.g., *A-O Broadcasting Corporation*, Forfeiture Order, 18 FCC Rcd 27069, 27076-77, ¶ 24 (2003), *recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 756, 760-62 (2005); *Liability of Danville Television Partnership*, Memorandum Opinion and Order and Forfeiture Order, 15 FCC Rcd 10628, 10630, ¶ 6 (MMB 2000). Carrera also did not document its unusual claim that only one general partner would be liable for Carrera's debts.

⁵⁶ See, e.g., *WebNet*, 18 FCC Rcd at 6878, ¶ 16; *Ellwood Beach Broadcasting*, 8 FCC Rcd at 454, ¶ 9. In its response, Carrera made various statements that the company would be unable to pay even a reduced forfeiture, only one partner would be liable for Carrera's debts and that partner would be unable to pay such a forfeiture, but did not provide the evidence that would support these claims. See, e.g., Response at 2, 10.

21. IT IS FURTHER ORDERED THAT, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, Carrera IS LIABLE FOR A MONETARY FORFEITURE in the amount of \$345,900 for willfully and repeatedly violating the Act and Commission's rules.

22. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁵⁷ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director -- Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.⁵⁸

23. IT IS FURTHER ORDERED that a copy of this FOREITURE ORDER shall be sent by certified mail, return receipt requested, to Jonathan S. Marashlian, Esq., the Helein Law Group, P.C., 8180 Greensboro Drive, Suite 700, McLean, Virginia 22120.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵⁷ 47 U.S.C. § 504(a).

⁵⁸ See 47 C.F.R. § 1.1914.